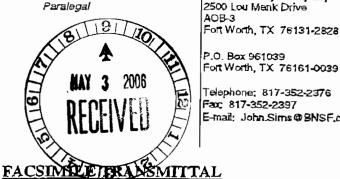
SHE BHOR: BIZZEM : BRIT. D. ZVVV VIDYON

JOHN A. SINS

BNSF Railway Company 2500 Lou Mank Drive AOB-3 Fort Worth, TX 76131-2828

NO. TUV 8173522397:=

AB-6 (SUB-NO. 409X)



Telephone: 817-352-2376 Fax: 817-352-2397

E-mail: John Sims @ BNSF.com

5/3/06 8:50AM INCLUDING THIS COVER PAGE. ************ ADDRESS: Surface Transportation Board ******************

FROM: JOHN A. SIMS

TELEPHONE NUMBER: (817) 352-2376

SPECIAL INSTRUCTIONS: _

IF YOU RECEIVED THIS MATERIAL IN ERROR PLEASE CALL (817) 352-2376 EQUIPMENT USED FOR TRANSMITTING - LANIER FAX 7550 TELECOPIER NO. (817) 352-2397

IMPORTANT: This message is intended for the use of the addressee and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. Therefore, if you are not the intended recipient, please notify us immediately by telephone for instructions for the return of the message to us at the above address via the United States Postal service. Thank you.

Sims, John A

From:

Sims, John A

Sent:

Wednesday, May 03, 2006 8:41 AM

To:

'newman@stb.dot.gov'

Cc:

Sims, John A

Subject:

FW: STB Docket No. AB-6 (Sub-No. 409X); BNSF Railway Company Abandonmentbetween

Reynolds and Superior, NE

Ms. Newman,

I apologize for getting back to you so late on this matter. You called awhile back indicating that the Board had received our consummation notice, dated January 24, 2006, in the above-referenced docket. You also inquired as to whether BNSF had fulfilled Condition #2 imposed in the STB decision served on July 27, 2004. Specifically, if BNSF had, prior to salvage activities, consulted with the Nebraska Office of the U.S. Fish and Wildlife Service (Nebraska FWS) regarding measures that should be taken to avoid impacts to migratory birds, pursuant to the Migratory Bird Treaty Act.

In our conversation, I mentioned that BNSF had assigned this condition to our salvage contractor in the salvage agreement. Unfortunately, our contractor did not resolve this condition prior to salvaging the line. You had asked that I provide you with a letter as to what had occurred in this particular matter and what measures would be put in place to prevent this from happening in the future.

Please read the string of e-mails attached. This outlines what occurred in this matter and the measures that BNSF have put in place to try and avoid this from happening in the future.

If you have any questions, please contact me at (817) 352-2376.

John Sims, Paralegal BNSF - Law Dept 2500 Lou Menk Dr, 3rd Fl Fort Worth, TX 76131-2828

----Original Message-----

From: Robert Harms@fws.gov [mailto:Robert_Harms@fws.gov]

Sent: Thursday, April 27, 2006 3:06 PM

To: Sims, John A

Cc: Steve Anschutz@fws.gov; John_Cochnar@fws.gov

Subject: Re: STB Docket No. AB-6 (Sub-No. 409X); BNSF Railway Company Abandonmentbetween

Reynolds and Superior, NE

Mr. Sims:

The U.S. Fish and Wildlife Service (Service) has completed its review of measures outlined below to address avoidance of adverse impacts to migratory birds that may result due to Burlington Northern Sante Fe railroad salvaging activities. The Service is satisfied with the measures proposed to be implemented and considers this matter resolved. It is recommended that salvagers contact me at (308) 382-6468, extension 17, prior to salvage, regarding measures to avoid impacts to migratory birds, pursuant to the Migratory Bird Treaty Act.

If you have any questions, please contact me.

Bob Harms

Robert R. Harms Fish and Wildlife Biologist U.S. Fish and Wildlife Service LAN VELL

203 West Second Street Grand Island, Nebraska 68801 Phone: 308-382-6468, Extension 17

Fax: 308-384-8835 robert_harms@fws.gov

> "Sims, John A" <John, Sims@bnsf.

409X); BNSF

04/12/2006 02:46

Reynolds and Superior,

<John.Sims@bnsf.com>

To:

<robert harms@fws.gov>

cc: "Sims, John A"

Subject: Re: STB Docket No. AB-6 (Sub-No.

Railway Company Abandonment between

NE

Mr. Harms,

Please reference our conversation a few weeks ago regarding the above-referenced matter. In our conversation I mentioned that we had completed the salvage of the above-referenced rail line. However, prior to salvaging the line, our salvager was to resolve an outstanding Surface Transportation Board (STB) condition that was assigned to them in the salvage agreement by BNSF. Our salvager was to contact Sharon Whitmore, Nebraska Office of the U.S. Fish and Wildlife Service (FWS) at (308) 382-6468, prior to salvage, regarding measures to avoid impacts to migratory birds, pursuant to the Migratory Bird Treaty Act. Based on that conversation, our salvager was to provide BMSF with a letter summarizing their discussion with FWS.

Unfortunately, we learned that the salvage contractor did not resolve this condition prior to salvaging the rail line. On learning that fact, we consulted with your office and you requested that BNSF put measures in place to address the situation with future salvage operators. As a result of this incident, we have now instituted a new process with salvagers requiring them to certify to BNSF engineering representatives, in advance of salvage activities, that they have complied with any environmental compliance with environmental conditions as a precondition to salvage.

We hope this adequately addresses your concerns for the future and apologize for the oversight on our part in this matter. Please advise if you consider the matter resolved or if you require further action or consultation in this matter.

Sincerely,

John A. Sims, Paralegal

BNSF - Law Dept

2500 Lou Menk Dr, 3rd Fl

8:78502897:# 4

Fort Worth, TX 76131-2828

(817) 352-2376

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